proceedings could lie against the Government in tort unless it is established that by reason of neglect or default on the part of a specified public officer in the course of his employment or acting in the scope of the authority of the officer, his principal i.e. the Government was also vicariously liable.

There are, therefore, two questions to be decided: firstly, whether the action was commenced within twelve months after the neglect or default complained of and secondly, whether action would lie against the Government as principal when the servant of the Government was not also a defendant to the action.

In considering the first point I had before me the court file which showed that the writ and the praecipe were submitted to the Registry on the 1st April 1964, i.e. the last date on which the action could be commenced as the accident occurred on the 2nd April 1963. There was also a note stating a specific instruction by the solicitors for the plaintiff that the writ was not to be issued until further instructions were received from them. The writ was finally sealed and issued on the 18th January 1965. It was submitted by the plaintiff that the action was commenced when the writ and praecipe were tendered to the Registry and that the delay in the issue of the writ was due mainly to the refusal of the Attorney-General's Office to supply the name of the driver of the steam roller through whose neglect, they say, the accident occurred. It later transpired that this submission was not quite true because the request for the particulars of the steam roller driver was only made on the 7th April 1965. Learned counsel then went on to distinguish between our rules and the English Rules of the Supreme Court. Under the English Rules of the Supreme Court (the Singapore provisions are similar) the words "and thereupon the writ shall be deemed to be issued" appear but they do not appear in our rules and the date of commencement of this action, therefore, was the date on which the writ was tendered to the Registry for registration. I think there is no substance in this argument. In any event, whatever merits there may be in the plaintiff's argument is negatived by the specific request not to issue the writ until further instructions.

The second point also presents little difficulty. Section 5 of the Government Proceedings Ordinance, 1956 which prescribes the liability of the Government in tort reads:—

"....Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent,...."

Section 6(1) states that:—

"(1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally."

and sub-section (4) of section 6 states that:—

"(6) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this sub-section or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid."

All this contemplates that the identity of the officer must be ascertained and the liability of the officer must be established before the Government can be made liable. In my view, therefore, the preliminary objections taken by the State Legal Adviser are well taken and the objections will be allowed.

The action will, therefore, be dismissed with costs.

Action dismissed.

Solicitors: *Wan Mustapha & Co.*

LIM KIAT MOY v. HAMZAH

[O.C.J. (Raja Azlan Shah J.) May 7, 1966]

[K.L. — Originating Summons No. 80 of 1966]

Land Laws — Caveat — Application to extend period of caveat — Meaning of "extend" — Whether application must be made before expiry of caveat — National Land Code (Act No. 56 of 1965), s. 326.

The respondent was the registered proprietor of a piece of land. By an agreement dated December 13, 1963, he agreed to sublease the land to the applicant. On December 30, 1965, the applicant lodged a caveat against the said land. On March 21, 1966, the collector served upon the applicant a notice of intended removal of the said caveat under the provisions of section 326 of the National Land Code (Act No. 56 of 1965). The notice specified the period of one month at the expiry of which the caveat would lapse. On April 8, 1966, the applicant made an application to the court to extend the life of the caveat. On April 29, 1966, the collector entered a memorial in the register removing the caveat. The application of the applicant came on for hearing on May 2, 1966. A court order not to remove the caveat had not been granted and served on the collector.

Held: as no court order had been served on the collector before the expiry of the period of one month specified in the notice of the collector, the collector was right in removing the caveat and the application must therefore be dismissed as, the period of the caveat having expired, it was not possible for the court to extend it.

Cases referred to:—

(1) *Chow E Wha* v. *Registrar of Title & Ors.* [1948-49] M.L.J. Supp. 119.

(2) *Direct United States Cable Co.* v. *Anglo-American Telegraph Co.* (1876-77), L.R. 2 App. Cas. 412.

ORIGINATING SUMMONS.

A. K. Sen for the applicant.

F. C. Arulanandom for the respondent.

Hamzah bin Dato' Haji Abu Samah (Legal Adviser, Selangor) for the Collector of Land Revenue.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application to extend the life of a private caveat registered with the Collector of Land Revenue, Ulu Langat, in the State of Selangor, on 30th December, 1965, until such time as the applicant's claim in Kuala Lumpur High Court Civil Suit No. 203 of 1966 is heard and finally disposed of.

The facts are in a small compass. The respondent is the registered proprietor of land held under M.C. 713 for lot No. 82 in the Mukim of Cheras in the District of Ulu Langat, hereinafter referred to as the said land. By an agreement dated 13th December, 1963, entered into between the respondent and the applicant the said land was sub-leased to the said applicant and a memorandum of transfer was duly registered in the Land Office. On 30th December, 1965, the applicant lodged a caveat against the said land. On 21st March, 1966, the Collector served upon the applicant a notice of intended removal of the said caveat under the provisions of section 326 of the National Land Code. On 6th April, 1966, the said notice was served on the applicant. On 8th April, 1966, the applicant made the present application. On 20th April, 1966, the collector wrote to the applicant's solicitor acknowledging their letter dated 15th April, 1966, and in paragraph 2 thereof he stated as follows:

"In reply I wish to inform you that your claim which you have presented to the High Court on behalf of Lim Kit Moy (f) concerning the above matter has been noted, and this office will not cancel this caveat until a decision has been received from the High Court."

On 29th April, 1966, the collector entered a memorial on the register removing the said caveat. The present application came before me in chambers this morning the 2nd May, 1966. In other words, a court order not to remove the said caveat has not been granted and served on the collector on the 21st April, 1966, or even to the present day.

This case brings into review the provisions of section 326 of the National Land Code. That section enacts that any person whose land is bound by a private caveat may apply to the Registrar (in the present case the collector) for its removal and the collector shall serve upon the caveator a notice of intended removal in Form 19C and subject to sub-section (2) remove the caveat at the expiry of the period of one month specified in that notice. In the instant case the caveat lapses at the expiry of one month specified in the notice, i.e. 21st April, 1966. However, the section is what I may say controlled by sub-section (2), that is the court may on the application of the caveatee from time to time extend the said period of one month and the collector on being duly served with a court order shall not remove the caveat until the expiry of the said period as thereby extended. That section is not analogous to section 171 of the repealed Land Code (Cap. 138) for the latter section expressly states that the proper registering authority shall remove a caveat at the expiry of the 21 days after notice on the caveator unless he shall have been previously served with a court order extending the time as provided for by section 172. That means the court order extending the time must be served upon the proper registering authority during the life of the caveat. The case of *Chow E Wha* v. *Registrar of Titles & Ors.*[1] is authority for the proposition. There is therefore a manifest distinction between the two sections and that case cannot accordingly be invoked into a consideration of the instant case on the ground that sub-section (2) of section 326 of the National Land Code is wide and does not specify the time limit for service of the court order on the collector. The question therefore arises whether sub-section (2) enacts that the court order must be served on the collector before the caveat becomes spent.

In interpreting the section the duty of the court is to construe it according to the intention expressed in the section itself. Lord Blackburn pointed this out long ago in the case of *Direct United States Cable Company* v. *Anglo-American Telegraph Company*: [2]

"The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand those words it is material to inquire what is the subject-matter with respect to which they are used, and the object in view."

The object of sub-section (2) is to extend the duration of the caveat and the sub-section must therefore be construed so as to give effect to that general purpose. To my mind the word "extend' is used in the common intercourse of mankind and the popular meaning attributed to it is that it enlarges or gives further duration to any existing right rather than re-vest an expired right. To construe it otherwise seems to me not only to place a strained construction on the words of the sub-section but also to introduce a term which is unreasonable in two respects: firstly, it would not be an "extension" but a "re-creation", and predicating the purpose of the section to be to benefit a caveator by the extension of his rights, is adopting a very different idea from re-creating an expired right; secondly, it would be inconsistent with the general tenor of the phrase "the Registrar on being duly served with any order of the court under this sub-section shall

not remove the caveat until the expiry of the said period as thereby extended" for that would imply that only when there exists a caveat can the Registrar be said "not to remove" the same. The word "extend" is too strong for me to grapple with; and if the court were to get rid of its operation, a great public injury would be effected by calling back a right that by lapse of time had become extinct. In my view the language of the section is wholly prospective. I would therefore dismiss the application with costs.

Under Order 54 rule 22A of the Rules of the Supreme court I certify that I require no further argument on the matter.

Application dismissed.

Solicitors: *Ng Kok Thoy & Co.; Arulanandom & Co.*

DISTRICT COUNCIL CENTRAL, PROVINCE WELLESLEY v. YEGAPPAN

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Abdul Aziz J.) May 9, 1966]

[K.L. — Federal Court Civil Appeal No. 101 of 1964]

Administrative Law — Certiorari — Applicant for certiorari must have legal rights which would be infringed — Locus standi of applicant — Error on the face of the record — Discretion of court.

This was an appeal against the decision of the High Court which had issued an order of *certiorari* to quash the decision of the District Council Central, Province Wellesley in approving the site plan and building plans constituting a housing scheme ([1965] 1 M.L.J. 63). The trial judge had found that the applicant had status to seek the order of *certiorari* because as the owner and occupier of the land adjacent to the land which it was proposed to develop "he could expect that the development will be in compliance with the relevant bye-laws and the section of the Municipal Ordinance". He also found that there had been an error, on the face of the record as the District Council had exceeded its jurisdiction by approving a plan which was in breach of the bye-laws.

Held: (1) the breaches by the District Council in this case could only be discovered by a careful examination of the relevant bye-laws and even then the position was not free from doubt and therefore the error was not an error on the face of the record;

(2) that even assuming these were definite breaches, the applicant had no *locus standi* as he had not shown that any legal right or interest belonging to him would be affected by the approval of the plans;

(3) the application in his case was without merit and the conduct of the petitioner in the case was such that he did not deserve the discretionary remedy sought.

Cases referred to:—

(1) *Smith* v. *Chorley Rural Council* [1897] 1 Q.B. 678.

(2) *R.* v. *Preston Rural District Council, ex parte Longworth*, 106 L.T. 37.

(3) *R.* v. *Minister of Health* [1939] 1 K.B. 232; [1938] 4 All E.R. 32.

(4) *R.* v. *Paddington Rent Tribunal, ex parte Kendal Hotels Ltd.* [1947] 1 All E.R. 448.

(5) *R.* v. *Hendon Rural District Council, ex parte Chorley* [1933] 2 K.B. 696.

(6) *Davies* v. *Price* [1958] 1 W.L.R. 434.

(7) *R.* v. *Surrey Justices* L.R. 5 Q.B. 466.

(8) *R.* v. *Stafford Justices* [1940] 2 K.B. 43.

FEDERAL COURT.

Ng Ek Teong (*Lim Ewe Hock* with him) for the appellant.

N. Sharma (*R. K. Sharma* with him) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: I have had the benefit of reading what I would, with respect, describe as the wholly admirable judgment of Dato' Abdul Aziz with which I am in entire agreement. I would wish to add a few words only of my own but would make it clear that nothing I say is to be taken as indicating any sort of mental reservation.

I entertain very grave doubts as to whether the present respondent has any *locus standi* in the matter. Even if the action of the local authority in approving the building plans submitted by the developers was a judicial act and even if the plans which they approved related to buildings which if and when they were erected would in certain respects contravene the authority's building bye-laws, I do not see that the respondent could possibly be entitled to an order of *certiorari* unless he showed that some patrimonial interest of his own was likely to be unlawfully affected by the carrying into effect of those particular parts of the plans in respect of which they were alleged to contemplate contravention of the bye-laws.

This he conspicuously failed to do. In the circumstances he was not entitled to an order of *certiorari ex debito justitiae* and even if there was a discretion to grant such an order, in my view, it should not have been exercised in his favour.

The most he has been able to allege, again I do not think his allegations were made out, is that in one or two respects the buildings covered by the plans will contravene the bye-laws when they are erected. If this happens and if the result affects his interest to such an extent as to constitute, for example, a nuisance he will have his action and the approval of the building plans by the local authority will afford the developers no protection. So far, however, as the local authority is concerned what in effect he is trying to do is to persuade the court to set aside a decision of the authority acting honestly and in the exercise of its jurisdiction on the ground that it is mistaken and that he cannot do (see *Smith* v. *Chorley Rural Council* [1] and *R.* v. *Preston Rural District Council, ex parte Longworth* [2]).